

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SANTIAGO A. RODRIGUEZ

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
 Commissioner of Social Security,

Defendant.

Case No.: 3:11-CV-1635-BTM-JMA

**ORDER GRANTING IN PART AND
 DENYING IN PART PLAINTIFF'S
 MOTION FOR ATTORNEY'S FEES
 PURSUANT TO 42 U.S.C. § 406(b)**

Plaintiff's counsel, Denise Bourgeois Haley ("Counsel" or "Ms. Haley"), has applied for an award of attorney's fees pursuant to section 206(b) of the Social Security Act, 42 U.S.C. § 406(b). The request is based on Ms. Haley's representation of Plaintiff before this Court pursuant to a contingent-fee agreement. (Doc. 16.) For the reasons set forth herein, the Court **GRANTS IN PART** and **DENIES IN PART** the motion for attorney's fees.

I. BACKGROUND

Denise Bourgeois Haley of the Law Offices of Lawrence D. Rohlfing represented Plaintiff in this case. (Haley Decl. ¶¶1-5, Ex. 1.) In October 2011, this Court remanded the case for further administrative proceedings pursuant to the parties' joint motion, pursuant to 42 U.S.C. § 405(g) (Doc. Nos. 9, 10). On remand, an Administrative Law Judge found Plaintiff disabled as of February 2, 2006, and Plaintiff was awarded past-due benefits of \$114,878.92. (Doc. 16-2.)

1 The Court thereafter reopened the case and entered judgment in favor of Plaintiff.
 2 (Docs. 12, 13.)

3 On September 30, 2014 the Court granted the parties' joint motion for an
 4 award of attorney fees paid by the government under the Equal Access to Justice
 5 Act ("EAJA"), 28 U.S.C. § 2412(d), in the amount of \$900.00 (Doc. No. 18).
 6 Counsel now seeks a fee award pursuant to 42 U.S.C. § 406(b)(1)(A), which
 7 permits an award of fees from the benefits received by Plaintiff. In accordance
 8 with the contingent fee agreement, Counsel seeks an order awarding \$4,000.00 in
 9 fees and requiring her to refund to Plaintiff the \$900.00 in EAJA fees previously
 10 received by counsel.

11 **II. STANDARD**

12 42 U.S.C. § 406(b)(1) provides:

13 Whenever a court renders a judgment favorable to a claimant
 14 under this subchapter who was represented before the court by an
 15 attorney, the court may determine and allow as part of its judgment a
 16 reasonable fee for such representation, not in excess of 25 percent of
 17 the total of the past-due benefits to which the claimant is entitled by
 reason of such judgment

18 When evaluating a request for a contingent fee under § 406(b), courts must
 19 first look to the contingent-fee agreement, then test it for reasonableness.
 20 Gisbrecht v. Barnhart, 535 U.S. 789, 808 (2002). The following factors, alone or
 21 in combination, may warrant a reduction: (1) the result achieved; (2) "substandard
 22 representation"; (3) delay by counsel; and (4) whether "the benefits are large in
 23 comparison to the amount of time counsel spent on the case," thereby resulting in a
 24 windfall. Id. at 805; see also Crawford v. Astrue, 586 F.3d 1142, 1151-53 (9th Cir.
 25 2009).

1 III. DISCUSSION

2 Plaintiff signed a 25% contingent fee agreement, the maximum allowed by
3 406(b). (Doc. 16-1.) In this case, that amounts to \$28,719.73. Plaintiff's counsel
4 seeks a fee of \$4,000, 3% of the past due benefits.

5 The Court believes that a reduction of the requested fee is warranted. Plaintiff's
6 counsel claims that the award is for 6.4 hours counsel expended before the District
7 Court. However, upon examining the time records, it appears that the total time
8 spent on the case before the District Court was 4.6 hours, with 1.5 of the hours
9 billed by the attorney and 3.1 hours billed by a paralegal. This is a case where the
10 benefits awarded, \$114,878.92, are very large compared to the minimal amount of
11 time counsel spent on the case.

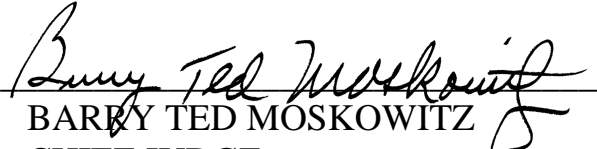
12 The Court concludes that the windfall created by the disparity between the size
13 of the award and the amount of time counsel spent on the case justifies a reduction
14 of the award by \$2,000. Accordingly, the Court awards attorney's fees in the
15 amount of \$2,000.

16 IV. DISPOSITION

17 The motion for attorney's fees is **GRANTED IN PART** and **DENIED IN**
18 **PART**. The Court awards attorney's fees to Denise Bourgeois Haley in the
19 amount of \$2,000. Counsel shall reimburse Plaintiff \$900, the amount paid by the
20 government under the EAJA.

21 **IT IS SO ORDERED.**

22
23 DATED: October 20, 2014

24 
25 BARRY TED MOSKOWITZ
26 CHIEF JUDGE
UNITED STATES DISTRICT COURT